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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 389

MORGANTOWN GLASSWARE GUILD, INC., PETITIONER

v.

GEORGE H. HUMPHREY, SECRETARY OF THE TREASURY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 13–15) is not reported. The opinion of the Court of Appeals (Pet. App. 1a–3a) is not as yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on June 7, 1956. The petition for a writ of certiorari was filed on September 5, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

Petitioner, a domestic glassware producer, seeks a declaratory judgment that the Secretary of the Treasury, in assessing duties on imported glassware on the

basis of tariff concessions made by the President under the Trade Agreements Act of 1934, as amended, is proceeding under unconstitutional authority, and that the lawful tariff rates are those established by the Tariff Act of 1930. The questions presented are:

1. Whether both courts below were correct in holding that the District Court was without jurisdiction, the Customs Court having exclusive jurisdiction in this matter.

2. Whether the District Court and Court of Appeals were correct in holding that petitioner is not entitled to judicial relief because it has not exhausted its administrative remedy.

STATUTES INVOLVED

The relevant portions of Section 516 (b) of the Tariff Act of 1930, 46 Stat. 735, 19 U. S. C. 1516 (b), and 28 U. S. C. Sections 1340 and 1583, are set forth in the Appendix, *infra,* pp. 13–16.

STATEMENT

This action was brought by petitioner, a domestic producer of glassware, to obtain a declaratory judgment that the respondent, Secretary of the Treasury, in assessing tariff duties on imported glassware on the basis of concessions in tariff rates made by the President under the Trade Agreements Act of 1934, as amended, is acting unconstitutionally and that the lawful rates are those set forth in the Tariff Act of 1930. The relevant facts and the proceedings below may be summarized as follows:

The complaint, filed February 28, 1955, stated that an increase in low cost glassware imports from Euro-

pean and Japanese manufacturers, beginning in 1950, had substantially reduced petitioner's market, and that this market reduction was caused by unlawfully low duties on imported glassware assessed by the Secretary of the Treasury (R. 2–3). The proper rate of duty on handblown ware was asserted to be sixty percent *ad valorem* and the proper rate on pressed ware fifty percent *ad valorem,* all as established by Paragraphs 218 (f) and (g) of the Tariff Act of 1930, 46 Stat. 590, 606, 19 U. S. C. 1001 (R. 3). However, the complaint went on, the Secretary was assessing reduced duties on such imported glassware on the basis of certain concessions in the rates made by the President under the authority delegated to him by the Trade Agreements Act of 1934, as amended, 48 Stat. 943, 57 Stat. 125, 59 Stat. 410, 63 Stat. 698; the Trade Agreements Extension Act of 1951, 65 Stat. 72; and the Trade Agreements Extension Act of 1953, 67 Stat. 472, 68 Stat. 360 (R. 3). The complaint alleged that the reduced rates were null and void because the statutes under which the President assumed to reduce the duty rates established in the Tariff Act of 1930 were violative of Article I, Sections 7 and 8, and Article II, Section 2, of the Constitution, "in that they attempt to delegate to the President the legislative duty of Congress to regulate foreign commerce, to delegate to the President the supreme taxing power of Congress, and to delegate to the President the treaty-making powers of Congress, all of which powers are beyond the Constitutional authority of the President to exercise and be-

yond the Constitutional power of Congress to delegate" (R. 3–4). Similar allegations were made with respect to the reduced rates on glassware contained in the multilateral General Agreement on Tariffs and Trade (Geneva Agreement) of 1947, 61 Stat., parts 5 and 6[1] (R. 4). Petitioner sought a judgment declaring that the Secretary's acts were in violation of the Tariff Act of 1930 and that they were performed in the exercise of an unconstitutional authorization (R. 5).

On May 4, 1955, the Secretary moved for dismissal on the ground that the District Court lacked jurisdiction over the subject matter, the Customs Court having exclusive jurisdiction, or, in the alternative, on the ground that the complaint failed to state a claim upon which relief could be granted (R. 5–6). Thereafter, on May 27, 1955, petitioner moved for leave to file an amended complaint (R. 6). The proposed amended complaint (R. 6–11) was substantially the same as the original, but with the further allegation that the Secretary of the Treasury's actions were taken "in concert with, in conscious parallelism with, and in conspiracy with John Foster Dulles, Secretary of State of the United States, and other officials, as the result of mutual agreement and undertaking among and between them to destroy and take away plaintiff's business and give and divert it to foreign producers whose countries of domicile are signatories of GATT [the Geneva Agreement]" and that the "acts of defendant amount to

[1] Commonly referred to by its initials, GATT.

an unreasonable restraint of trade and competition contrary to law" (R. 10). The Secretary thereafter filed his opposition to the Motion for Leave to Amend (R. 11–12) and petitioner filed its opposition to the Secretary's Motion to Dismiss (R. 13).

On September 20, 1955, the District Court, filing a memorandum opinion (R. 13–15), denied petitioner's Motion for Leave to Amend and granted the Secretary's Motion to Dismiss (R. 16). The court noted that Congress had provided a remedial procedure (19 U. S. C. 1516) whereby an American manufacturer may protest to the Secretary of the Treasury the rate of duty placed upon imported merchandise of the class produced by the manufacturer. Under that procedure, the court observed, if the Secretary's ruling is adverse to the domestic manufacturer, the manufacturer may have the ruling reviewed in the United States Customs Court with the right of appeal to the Court of Customs and Patent Appeals and further review by this Court on petition for certiorari. Following the command of 28 U. S. C. 1583 (*infra*, p. 16), which declares that the jurisdiction of the Customs Court in such cases is exclusive, the District Court concluded that it was without jurisdiction (R. 14–15). The court went on to state that, even if it were assumed that it had jurisdiction, it could not entertain the complaint because petitioner had not exhausted its administrative remedies (R. 15.)

On appeal, the Court of Appeals affirmed *per curiam* on both the exclusive jurisdiction and exhaustion grounds (Pet. App. 1a–2a).

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ARGUMENT

As both courts below held, petitioner's action fails for the two independently sufficient reasons that (1) questions of the type involved here are for the special system of customs courts, subject to review by this Court but beyond the jurisdiction of the district courts, and (2) even if there were district court jurisdiction, petitioner has not exhaused the administrative remedies Congress provided. There is no conflict and no other reason for certiorari.

1. Congress has provided a comprehensive statutory scheme for the resolution of complaints of American manufacturers with respect to the rates of duty on goods imported into this country. 46 Stat. 735, 19 U. S. C. 1516 (b), *infra*, pp. 13–15.[2] See *Feltex Corp.* v. *Dutchess Hat Works*, 21 C. C. P. A. (Customs) 463; *Neumann-Endler, Inc.* v. *United States*, 27 C. C. P. A. (Customs) 53. Under 19 U. S. C. 1516 (b), a domestic manufacturer who believes that an improper rate of duty is being imposed on designated imported mer-

[2] This review procedure was enacted as Section 516 (b) of the Tariff Act of 1930, 46 Stat. 735. By Section 2 of the Trade Agreements Act of 1934, 48 Stat. 944, the review provision was made inapplicable with respect to any article covered by a foreign trade agreement. However, in Section 9 (a) of the Trade Agreements Extension Act of 1951, 65 Stat. 72, Congress granted to domestic manufacturers the right to utilize this procedure with respect to articles covered by foreign trade agreements; see Report of Senate Finance Committee and Report of Conference Committee accompanying H. R. 1612, 82d Cong., 1st Sess., U. S. Code Cong. Service, 1951, pp. 1469, 1471–1472. This has not been changed by the subsequent Trade Agreements Extension Acts. Act of August 7, 1953, 67 Stat. 472; Act of July 1, 1954, 68 Stat. 360; Act of June 21, 1955, 69 Stat. 162.

chandise of a class or kind produced by him may file a complaint to that effect, together with the reasons for his belief, with the Secretary of the Treasury. If the Secretary determines that the rate imposed is correct, the domestic manufacturer is afforded an opportunity to contest the rate through a specified procedure which culminates in a "protest" of a customs collector's liquidation of entry of such merchandise. The manufacturer's "protest" is then to be heard and determined by the Customs Court with the right of appeal to the Court of Customs and Patent Appeals. See 19 U. S. C. 1516 (b), *infra*, pp. 13–15; 28 U. S. C. 1541.[3] Review of an adverse decision of the Court of Customs and Patent Appeals may be had through a petition for a writ of certiorari in this Court. 28 U. S. C. 1256.

Congress has not only provided a special forum for review, but has gone further and provided that the jurisdiction vested in the customs courts in matters such as this shall be exclusive. 28 U. S. C. 1583 (*infra*, p. 16), enjoins that:

> The Customs Court shall have exclusive jurisdition to review on protest the decisions of any collector of customs, including all orders and findings entering into the same, as to the rate and amount of duties chargeable and as to all exactions of whatever character within the jurisdiction of the Secretary of the Treasury * * *.

[3] The consignee of the contested merchandise is to be given notice of the protest filed in the Customs Court and is given the right to appeal and be heard as a party in interest before that court. 19 U. S. C. 1516 (c), *infra*, p. 15.

Moreover, Congress has, in another section of the Judicial Code, expressly excluded from the original jurisdiction of the district courts "matters within the jurisdiction of the Customs Court." 28 U. S. C. 1340, *infra*, p. 15.

Petitioner, a domestic manufacturer, falls squarely within the class which can avail itself of 19 U. S. C. 1516 (b). Accordingly, the issues raised in the courts below were subject to preliminary administrative determination followed by review in the customs courts, a system of courts specifically provided by Congress to consider such matters.

These explicit provisions for jurisdiction in the customs courts—to the exclusion of the district courts—mark the continuation of a well-defined and long-established policy.[4] In recognition of the clear

[4] Congress initiated this practice with the Customs Administration Act of 1890 (26 Stat. 131), in which it undertook the establishment of a separate specialized system of courts for the resolution of customs controversies. In the 1890 Act, Congress provided for a Board of General Appraisers (Section 12, 26 Stat. 136), which was to have jurisdiction over all protests from decisions of the collectors of customs, and appeals for reappraisement. Sections 13, 14, 26 Stat. 136–138. Under Section 15 of the 1890 Act (26 Stat. 138), the courts of general jurisdiction participated in this review procedure at the appellate level. However, even this participation was eliminated by the Tariff Act of 1909, 36 Stat. 11, 91. By that Act, Congress withdrew from the courts of appeals jurisdiction to review decisions of the Board of General Appraisers and vested that jurisdiction in the Court of Customs Appeals, which it simultaneously established. Section 29, 36 Stat. 105–107. In 1926, the Board of General Appraisers was redesignated as the Customs Court. 44 Stat. 669. The present provision for exclusive jurisdiction in that court (28 U. S. C. 1583) first appeared in the 1948 revision of the Judicial Code, 62 Stat. 943.

congressional design, and even prior to the appearance of 28 U. S. C. 1583, the exclusive jurisdiction of the customs courts in customs matters, and the corollary lack of district court jurisdiction, has been repeatedly recognized. *United States* v. *Sherman & Sons Co.*, 237 U. S. 146, 152; *Boston Wool Trade Ass'n* v. *Snyder*, 161 F. 2d 648 (C. A. D. C.); *United States* v. *Cottman Co.*, 190 F. 2d 805 (C. A. 4), certiorari denied, 342 U. S. 903; *Cottman Co.* v. *Dailey*, 94 F. 2d 85 (C. A. 4); *David L. Moss Co.* v. *United States*, 103 F. 2d 395 (C. C. P. A.); *Riccomini* v. *United States*, 69 F. 2d 480 (C. A. 9); *Patchogue-Plymouth Mills Corp.* v. *Durning*, 101 F. 2d 41 (C. A. 2); *Gulbenkian* v. *United States*, 186 Fed. 133 (C. A. 2).

The constitutional issues petitioner poses cast no shadow of doubt on these settled jurisdictional rules. The gist of petitioner's contention here is that it is entitled to have its allegations as to the constitutionality of the Trade Agreements Acts determined by the District Court, a constitutional court, rather than by the Customs Court, a legislative court. It is established, however, that the customs courts may pass on constitutional questions, and they have repeatedly done so. See, *e. g.*, *Hampton, Jr., & Co.* v. *United States*, 14 Ct. Cust. Appls. 350, T. D. 42030, affirmed, 276 U. S. 394; *United States v. Sears, Roebuck & Co.*, 20 C. C. P. A. (Customs) 295; *United States* v. *Fox River Butter Co.*, 20 C. C. P. A. (Customs) 38, certiorari denied, 287 U. S. 628. The presence of constitutional issues creates no exception from the law establishing the exclusiveness of the customs courts' jurisdiction. See *Cottman Co.* v.

Dailey, 94 F. 2d 85, 88–89 (C. A. 4); *Riccomini* v. *United States,* 69 F. 2d 480, 483 (C. A. 9).

Ultimate resolution of the issues in these customs controversies, including constitutional issues, is reserved to a constitutional court. As we have noted, review of decisions of the Court of Customs and Patent Appeals by this Court, through certiorari, is an integral part of the customs adjudication procedure. But the fact that petitioner tenders such issues affords no ground for revising the perfectly adequate jurisdictional scheme Congress could and did provide.

2. Apart from the jurisdictional barriers discussed above, petitioner's action fails for another reason. Petitioner has never taken any of the steps—complaint to the Secretary "protest," etc. (*supra,* pp. 6–7)—prescribed in 19 U. S. C. 1516 (b) for redress of its grievance. (Pet. App. 2a; R. 14). It is, of course, a "long settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." *Myers* v. *Bethlehem Shipbuilding Corp.,* 303 U. S. 41, 50–51. See also, *Macauley* v. *Waterman Steamship Corp.,* 327 U. S. 540, 543; *Federal Power Comm.* v. *Arkansas Power and Light Co.,* 330 U. S. 802; *Aircraft & Diesel Corp.* v. *Hirsch,* 331 U. S. 752; *Public Service Comm. of Utah* v. *Wycoff Company, Inc.,* 344 U. S. 237, 246; *Franklin*

v. *Jonco Aircraft Corp.*, 346 U. S. 868 (summarily reversing a statutory three-judge court in *Jonco Aircraft Corp.* v. *Franklin*, 114 F. Supp. 392 (N. D. Texas). Where, as here, Congress has established a detailed statutory procedure calling for administrative adjudication of claims or grievances, "the courts have no lawful function to anticipate the administrative decision with their own * * *." *Aircraft & Diesel Corp.* v. *Hirsch*, 331 U. S. 752, 767.

The fact that petitioner challenges the power of the Secretary by attacking the constitutionality of the authority under which his actions were taken does not obviate application of the exhaustion doctrine. *Allen* v. *Grand Central Aircraft Co.*, 347 U. S. 535, 553; *Aircraft & Diesel Corp.* v. *Hirsch*, 331 U. S. 752, 771–772; *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 51; *White* v. *Johnson*, 282 U. S. 367, 373–374. Indeed, the presence of constitutional issues increases rather than diminishes the need for exhaustion. Deference to a statutory scheme for administrative proceedings prior to judicial action is not the sole reason underlying the exhaustion principle. Prosecution of the administrative remedy may yield a result which eliminates the need for a judicial determination or renders precise the scope of decision necessary. Constitutional issues may thus be avoided, or at least narrowly defined. Cf. *Aircraft & Diesel Corp.* v. *Hirsch*, 331 U. S. 752, 772–773.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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OCTOBER, 1956.

APPENDIX

1. The relevant provisions of Section 516 of the Tariff Act of 1930, as amended, 46 Stat. 735, 19 U. S. C. 1516, are as follows:

> Section 516. Appeal or Protest by American Producers.
>
> * * * * *
>
> (b) *Classification.*—The Secretary of the Treasury shall, upon written request by an American manufacturer, producer, or wholesaler, furnish the classification of, and the rate of duty, if any, imposed upon, designated imported merchandise of a class or kind manufactured, produced, or sold at wholesale by him. If such manufacturer, producer, or wholesaler believes that the proper rate of duty is not being assessed, he may file a complaint with the Secretary, setting forth a description of the merchandise, the classification, and the rate or rates of duty he believes proper, and the reasons for his belief. If the Secretary decides that the classification of, or rate of duty assessed upon, the merchandise is not correct, he shall notify the collectors as to the proper classification and rate of duty and shall so inform the complainant, and such rate of duty shall be assessed upon all such merchandise entered for consumption or withdrawn from warehouse for consumption after thirty days after the date such notice to the collectors is published in the weekly Treasury Decisions. If the Secretary decides that the classification and rate of duty are correct, he shall so inform the complainant. If dissatisfied with the decision of the Secretary, the complainant may file with the Secretary, not later than thirty days after the date of such decision, notice that

he desires to protest the classification of, or rate of duty assessed upon, the merchandise. Upon receipt of such notice from the complainant, the Secretary shall cause publication to be made of his decision as to the proper classification and rate of duty and of the complainant's desire to protest, and shall thereafter furnish the complainant with such information as to the entries and consignees of such merchandise, entered after the publication of the decision of the Secretary at the port of entry designated by the complainant in his notice of desire to protest, as will enable the complainant to protest the classification of, or rate of duty imposed upon, such merchandise in the liquidation of such an entry at such port. The Secretary shall direct the collector at such port to notify such complainant immediately when the first of such entries is liquidated. Within thirty days after the date of mailing to the complainant of notice of such liquidation, the complainant may file with the collector at such port a protest in writing setting forth a description of the merchandise and the classification and rate of duty he believes proper. Notwithstanding such protest is filed, merchandise of the character covered by the published decision of the Secretary, when entered for consumption or withdrawn from warehouse for consumption on or before the date of publication of a decision of the United States Customs Court or of the United States Court of Customs and Patent Appeals, rendered under the provisions of subsection (c) of this section, not in harmony with the published decision of the Secretary, shall be classified and the entries liquidated in accordance with such decision of the Secretary, and, except as otherwise provided in this Act, the liquidations of such entries shall be final and conclusive upon all parties. If the protest of the complainant is sustained in whole or in part by a decision of the United States

Customs Court or of the United States Court of Customs and Patent Appeals, merchandise of the character covered by the published decision of the Secretary, which is entered for consumption or withdrawn from warehouse for consumption after the date of publication of such court decision, shall be subject to classification and assessment of duty in accordance with the final judicial decision on the complainant's protest, and the liquidation of entries covering such merchandise so entered or withdrawn shall be suspended until final disposition is made of such protest, whereupon such entries shall be liquidated, or if necessary, reliquidated in accordance with such final decision.

(c) *Hearing and determination.*—A copy of every appeal and every protest filed by an American manufacturer, producer, or wholesaler under the provisions of this section shall be mailed by the collector to the consignee or his agent within five days after the filing thereof, and such consignee or his agent shall have the right to appear and to be heard as a party in interest before the United States Customs Court. The collector shall transmit the entry and all papers and exhibits accompanying or connected therewith to the United States Customs Court for due assignment and determination of the proper value or of the proper classification and rate of duty.

* * * * *

2. 28 U. S. C. 1340 is as follows:

Internal revenue; customs duties.

The district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue, or revenue from imports or tonnage except matters within the jurisdiction of the Customs Court.

3. 28 U. S. C. 1583 provides as follows:

> Review of decisions on protests.
>
> The Customs Court shall have exclusive jurisdiction to review on protest the decisions of any collector of customs, including all orders and findings entering into the same, as to the rate and amount of duties chargeable and as to all exactions of whatever character within the jurisdiction of the Secretary of the Treasury; decisions excluding any merchandise from entry or delivery, under any provision of the customs laws; and the liquidation or reliquidation of any entry, or the refusal to pay any claim for drawback or to reliquidate an entry for a clerical error as provided by the customs laws.

U. S. GOVERNMENT PRINTING OFFICE: 1956